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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JOSEPH GERASOLO, ELIZABETH GERASOLO, and PATRICK BLEACH,

Petitioners,

—v.—

THE ADHERENCE GROUP, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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62 pp

QUESTION PRESENTED

Whether under the Federal Interpleader Act, which provides "[t]he district courts shall have original jurisdiction of any civil action of interpleader" (28 U.S.C. § 1335), and requires such district courts "shall hear and determine the case" (28 U.S.C. § 2361), the discretionary standard of *Brillhart*[1] or the "exceptional circumstances" standard established by *Colorado River*[2], and *Moses H. Cone*[3] governs the decision of a United States District Court having custody of the interpleaded fund, to abstain from exercise of federal subject matter jurisdiction in deference to a subsequently commenced state court proceeding?

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1 *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942).

2 *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1974).

3 *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983).

LIST OF PARTIES

The names of all parties to this petition and to proceedings below are contained in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Joseph Gerasolo, Elizabeth Gerasolo and Patrick Bleach respectfully request that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered on December 21, 1995.

OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit is not officially reported; it is reproduced in the Appendix at A1a. The relevant order of the United States District Court for

the District of New Jersey is not officially reported; it is reproduced in the Appendix at A28a.

STATEMENT OF JURISDICTION

On December 21, 1995 judgment of the United States Court of Appeals for the Third Circuit was entered.

On February 2, 1996 petitions for *in banc* review by the United States Court of Appeals for the Third Circuit were denied. A32a, 33a.

Jurisdiction to review by writ of certiorari the judgment in question is conferred by 28 U.S.C. §§ 1254(1) and 2101(c).

STATUTES INVOLVED

The applicable statute is the Federal Interpleader Act, 28 U.S.C. §§ 1335 and 2361; it is reproduced in the Appendix at A34a, 35a.

STATEMENT OF THE CASE

A. Nature of the Case.

The basis for federal subject matter jurisdiction in the district court was the Federal Interpleader Act, 28 U.S.C. § 1335.

Petitioner Joseph Gerasolo, a citizen of the State of New York, was employed by respondent The Adherence Group, Inc. ("TAG") from 1977 to his dismissal in October, 1993; from 1985 until dismissal, he was president and a director of TAG.

Petitioner Elizabeth Gerasolo is Joseph's wife. She is a citizen of the State of New York. Elizabeth was never an employee of TAG.

Petitioner Patrick Bleach, a citizen of the State of New Jersey, was employed by TAG from 1977 to October, 1993; from 1990 to termination of his employment, Bleach was executive vice president and a director of TAG.

Respondent TAG is a corporation organized under the laws of Delaware with its office and principal place of business at 669 River Drive in the Borough of Elmwood Park, County of Bergen, State of New Jersey.

In June 1991, TAG established a non-qualified executive compensation plan pursuant to which Joseph Gerasolo, Bleach and other executives opened accounts with Mainstay, Inc. through NYLife Distributors, Inc. ("NYLife"). During the period from June, 1991 to termination of their employment in October, 1993, TAG deposited funds into the Mainstay accounts of each of these officers.

There were two categories of Gerasolo Accounts at Mainstay:

(1) The 1989 Accounts opened jointly by Joseph and Elizabeth Gerasolo through NYLife, into which contributions from personal savings were made from January, 1989 to July, 1991. After July, 1991 the accounts remained open accumulating interest and dividends; and,

(2) The 1991 Accounts opened individually by Joseph Gerasolo through NYLife for the purpose of receiving non-qualified executive compensation paid by TAG as part of his compensation package.

The Bleach Accounts were opened with Mainstay in June 1991 for the purpose of receiving Bleach's non-qualified executive compensation paid by TAG as part of his compensation package.

In October, 1993 employment of Gerasolo and Bleach at TAG was terminated. The termination procedure included execution of separate Settlement Agreements. By each Agree-

ment TAG undertook to indemnify and hold harmless Gerasolo and Bleach in connection with any claim, and to release them from liability, "arising out of any activity occurring during the term of their employment." TAG also undertook to pay "[a]ll expenses, legal and otherwise, associated with all claims concerning the [TAG] Group. . . . asserted after termination resulting in [Gerasolo or Bleach] being named a party . . . " Appellants' Appendix in Third Circuit, pp. 77 and 97.

B. Disposition Below.

1. Proceedings in the District Court.

On February 15, 1994 NYLife, reacting to claim made by TAG against Mainstay accounts of executives, including former officers Gerasolo and Bleach, invoked the protection of the Federal Interpleader Act, 28 U.S.C. § 1335, by filing an Interpleader Complaint in the United States District Court for the District of New Jersey. The Gerasolos, Bleach, and TAG were among defendants named and served in the interpleader action.

NYLife liquidated all Mainstay accounts opened in 1991 by Gerasolo, Bleach, and other TAG officers, and into which TAG was making deposits, along with Mainstay accounts opened jointly by Joseph and Elizabeth Gerasolo in 1989. Cash derived from these liquidations totalled $215,489.50, which was deposited in the district court registry to satisfy the requirement of 28 U.S.C. § 1335(a)(2).

The district court directed all defendants to show cause why they should not be required to interplead and settle among themselves right to the interpleaded fund, and why NYLife should not be dismissed from suit. All defendants were enjoined from instituting or prosecuting claim in any other court, state or federal, against the interpleaded fund.

In response to the Order to Show Cause entered in connection with the interpleader action, the Gerasolos and Bleach filed a cross-motion for an order, *inter alia*, dismissing the action against them, and reinstating their accounts at Mainstay. Joseph Gerasolo and Bleach made claim against TAG for costs and expenses, including attorneys' fees, incurred as a consequence of TAG's breach of Settlement Agreement release and indemnity provisions.

TAG responded to the cross-motion by contending remittances into Mainstay accounts had not been authorized by TAG's board of directors, or by its Swiss parent, and the Settlement Agreements were voidable for fraud.

On March 23, 1994 TAG filed complaint in Superior Court of New Jersey, Middlesex County, against the Gerasolos, Bleach and others. Among other things, by this state court action TAG made claim to funds which were the subject of the federal interpleader action.

On May 19, 1994 the district court granted NYLife's request for interpleader relief. The interpleaded fund of $215,489.50 was to remain on deposit in the district court registry, and NYLife was dismissed from the action. Decision on the cross-motion of Gerasolo and Bleach for attorneys' fees and costs would abide determination of the merits of the underlying dispute between TAG and its former officers. The district court allowed TAG to continue its state court action.

On July 8, 1994 TAG filed motion for an order: (1) dismissing cross-claims for want of federal subject matter jurisdiction (2) transferring the interpleaded funds from the registry of the district court to the registry of the state court in which TAG had commenced its action against the Gerasolos, Bleach and others, (3) alternatively, staying further proceedings in the federal interpleader action so the New Jersey state court could decide how the district court should distribute the interpleaded fund.

On its motion, TAG made no reference to federal abstention, or its requirements.

In opposition to the TAG motion, the Gerasolos and Bleach maintained, *inter alia*, the district court must exercise its federal subject matter jurisdiction mandated by Congress under the Federal Interpleader Act, 28 U.S.C. § 1335, unless TAG could demonstrate the case falls within the "exceptional circumstance" ground for federal abstention established by *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976) and *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1 (1983).

By Order dated October 26, 1994 the district court, acting in the belief its May 19 Order granting NYLife § 1335 interpleader relief had marked the end of federal interpleader proceedings, declined exercise of § 1367(a) supplemental jurisdiction over Gerasolo and Bleach cross-claims. On this basis, the district court ordered: "[T]he instant case will be administratively terminated." A31a.

The district court retained possession of the interpleaded fund, but solely as a custodian. It would be the decision of the New Jersey state court which would determine competing rights to the fund and how the district court must distribute it.

On November 16, 1994 the Gerasolos and Bleach filed Notice of Appeal to the United States Court of Appeals for the Third Circuit.

2. The Appeal to the Court of Appeals for the Third Circuit.

On appeal, the Gerasolos and Bleach argued: (1) the district court committed fundamental error by concluding its granting relief to NYLife, the stakeholder, marked the end of the federal interpleader action[1]; (2) under *Colorado River*

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[1] An interpleader action involves two-stages: "During the first the court determines the right of the party invoking the remedy to compel the

Water Conservation District v. United States, 424 U.S. 800 (1976) and *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1 (1983) a district court may abstain from exercise of original federal jurisdiction "only in clear and exceptional circumstances, with the balances heavily weighted in favor of the exercise of jurisdiction." 460 U.S. at 16; and, (3) no "clear and exceptional circumstance" existed in this case.

TAG addressed the abstention issue by arguing: "the District Court need not have entertained any abstention doctrine analysis under the Federal Interpleader Statute, 28 U.S.C. § 1335, since [on May 19, 1994] an Interpleader judgment had been granted, and there was no longer a Federal claim with substance." TAG Brief, 5-6.

On August 1, 1995 the matter was argued.

On November 1, 1995 the Court of Appeals requested counsel return to re-argue the matter in light of *Wilton v. Seven Falls Co.*, ___ U.S. ___, 115 S. Ct. 2137 (1995) wherein the Court held that the "exceptional circumstance" test for district court abstention established in *Colorado River* and *Moses H. Cone* was not applicable to actions seeking relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, thereby re-affirming the continued viability of *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942) (holding district courts have broad discretion to abstain from granting relief under the Federal Declaratory Judgment Act).

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claimants to litigate their claims to the stake in one proceeding. It is at this point that the court determines whether the prerequisites to . . . statutory interpleader have been met. . . ." 7 Wright-Miller-Kane ("W-M-K"), *Federal Practice and Procedure*, § 1714 pp. 581-82 (1986). The second stage of interpleader "involves the determination of the respective rights of the claimants to the stake. . . ." 7 W-M-K, *Federal Practice and Procedure*, § 1714 pp. 584-86 (1986).

On November 29, 1995 the matter was argued before a reconstituted panel of the Third Circuit.[2]

By decision[3] dated and filed December 21, 1995 the Third Circuit unanimously held the district court had erroneously found the granting of relief to NYLife, the interpleader plaintiff, had marked the end of the federal interpleader action:

> We . . . hold that the district court's conclusion that all federal claims had been dismissed by virtue of its May 19, 1994 order was in error, and that its October 26, 1994 decision to terminate the case in favor of TAG's pending state court action on this basis was as well erroneous.

A9a.

The Third Circuit then turned "to the legal principles that are implicated by that portion of TAG's motion which in effect requested that the interpleader action be dismissed so as to allow the parties to resolve their dispute over the [interpleaded fund] in the New Jersey state court." A9a-10a.

The Third Circuit recognized a conflict in circuit courts on the question of whether the district courts possess broad equitable discretion to decline jurisdiction over a statutory interpleader lawsuit in favor of a pending state court proceeding, citing *Boston Old Colony Ins. Co. v. Balbin*, 591 F.2d 1040 (5th Cir. 1979) as the contrary authority. A16a-17a.

However, the Third Circuit acknowledged:

> Our review has not produced nor have the parties suggested any cases which analyze the scope of a district court's discretion under 28 U.S.C. § 1335 (1993) to defer

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[2] As a consequence of the death of the Honorable William D. Hutchinson, a member of the original panel, the Honorable Anthony J. Scirica joined the panel.

[3] Decision of the Third Circuit is reproduced in the Appendix at A1a-27a.

> to state proceedings *in light of the Supreme Court decisions we have just discussed*. . . .

A17a (emphasis in original; the cases "just discussed" were *Colorado River*, *Moses H. Cone*, *Brillhart* and *Will*)[4].

This Court in *Wilton* had stated: "The plurality's suggestion in *Will*[5] that *Brillhart* might have application beyond the context of declaratory judgments was rejected by the Court in *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1 (1983). . . ." 115 S.Ct. at 2142.

Nonetheless, by majority decision (Justices Mansmann and Scirica) the Third Circuit held "in this case of first impression" actions brought in the district courts under the Federal Interpleader Act, 28 U.S.C. § 1335, are not protected by the "clear and exceptional circumstance" test for federal abstention established by *Colorado River* and re-affirmed by *Moses H. Cone*. Rather, guided by *Wilton*, where this Court determined that the *Brillhart* standard applies in declaratory judgment actions, the Third Circuit held: "[A] motion to dismiss a federal statutory interpleader action during the pendency of a parallel state court proceeding is addressed to the sound discretion of the district court." A2a-3a.

Justice Roth dissented, stating in part:

> I believe that the majority misinterprets the recent Supreme Court decision in [Wilton]. In my opinion, *Wilton* restricts the application of *Brillhart's* discretionary standard to actions brought under the Declaratory Judgment Act or similar statutes giving district courts express discretionary jurisdiction. . . .
>
> Beyond the declaratory judgment context and in the absence of express language granting jurisdictional discretion, . . . federal courts have a "virtually unflagging

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4 *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655 (1978).

5 *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655 (1978).

> obligation . . . to exercise the jurisdiction given them" by Congress. . . . Because this case clearly falls outside of the declaratory judgment context and because there is no statutory indication that there is a discretionary character to the second stage of an interpleader proceeding, *Brillhart's* broad discretionary standard should not be applied in this case.

A25a.

* * *

> I am disturbed by what I construe as the judicial destruction of a congressionally created federal remedy. In my opinion, allowing courts broad authority to decide when to abstain from exercising jurisdiction clearly granted by Congress is an inappropriate exercise of judicial authority.
>
> I would apply the more narrow *Colorado River* test here in order to adequately uphold federal jurisdiction and the purposes of the law. If Congress desires federal courts to have broad discretion to abstain from resolving disputes brought under the interpleader statute, then Congress, not this court, should make its desire clear by clarifying the language of the statute.

A27a.

On December 21, 1995 judgment was entered vacating the district court's October 26, 1994 order and remanding the case to the district court for further proceedings on TAG's motion "which requested that the court defer to the New Jersey state court proceeding as to the interpleaded claims and dismiss the cross-claims brought against it by Gerasolo and Bleach." A24a. On remand, the district court would apply the broad discretionary standard of *Brillhart*, not the "clear and extraordinary circumstance" standard of *Colorado River* and *Moses H. Cone*.

The Gerasolos and Bleach, and TAG, filed petitions for rehearing *in banc*.

On February 2, 1996 both petitions were denied. A32a, 33a.

REASONS FOR GRANTING WRIT

As stated in Supreme Court Rule 10, among the character of reasons considered by the Court in determining whether to exercise its discretion to review by writ of certiorari are when:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter. . . ; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> * * *
>
> (c) . . . a United States court of appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.

In accordance with the provisions of Rule 10 cited above, there are compelling reasons here for exercise by this Court of its discretion to review by writ of certiorari.

Firstly, the Third Circuit's majority decision below decides an important federal question, *i.e.*, the standard of discretion governing a district court's decision to abstain from exercise of original jurisdiction under the Federal Interpleader Act, 28 U.S.C. § 1335,[6] in a way that conflicts with the rule governing federal abstention established by this Court in *Colorado River* and *Moses H. Cone*.

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6 The Federal Interpleader Act, 28 U.S.C. § 1335, is reproduced in the Appendix at A34a.

Secondly, it represents a misapplication and unwarranted expansion of this Court's decision in *Wilton*, which re-affirmed *Brillhart*, a decision this Court recognized in *Moses H. Cone* had no application beyond the context of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.[7] 115 S.Ct. at 2142.

Thirdly, it is in conflict with decisions of the United States Court of Appeals for the Fifth Circuit holding that under the Federal Interpleader Act: "[W]here jurisdiction clearly appears, Federal District Courts do not have the right to decline to exercise that jurisdiction in litigation involving no important question of the public policy of the state." *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, 156 F.2d 519, 524 (5th Cir. 1946); *Boston Old Colony Ins. Co. v. Balbin*, 591 F.2d 1040 (5th Cir. 1979) (same).

Fourthly, it represents an undermining of the integrity of proceedings brought under the Federal Interpleader Act, 28 U.S.C. § 1335, a statutory scheme poles apart from the clearly discretionary nature of relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, considered in *Brillhart* and *Wilton*, thereby calling for the exercise by this Court of its supervisory power.

The Federal Interpleader Statute, 28 U.S.C. § 1335, represents an express grant of original subject matter jurisdiction. Congress declares: "The district courts *shall* have original jurisdiction of any civil action of interpleader . . . " where (1) the stake has a value of $500, or more, (2) at least two claimants are of adverse citizenship, and (3) the interpleader-plaintiff deposits the stake (cash or other property) into the registry of the court, "there to abide the judgment of the court." 28 U.S.C. § 1335(a)(1) and (2). (emphasis added).

By § 2361, Title 28 U.S.C.,[8] Congress declares a district court vested with subject matter jurisdiction under § 1335

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[7] The relevant provision of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, is reproduced in the Appendix at A36a.

[8] Title 28 U.S.C. § 2361 is reproduced in the Appendix at A35a.

"*shall* hear and determine the case" (emphasis added). To act on this mandate, Congress provides the district courts power to protect their interpleader jurisdiction by issuance of injunctions restraining all claimants "from instituting or prosecuting any proceeding in any State or United States court affecting the property . . . involved in the interpleader action," and to "make all appropriate orders to enforce its judgment." 28 U.S.C. § 2361.

To ensure all claimants to the fund are present in a single *federal* proceeding, Congress grants the district court power for nationwide service of process. 28 U.S.C. § 2361.

This Court has long mandated district courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given to them," and "pendency of an action in a state court is no bar to proceedings concerning the same matter in the Federal Court having jurisdiction." *McClellan v. Carland*, 217 U.S. 268, 282 (1910).

In *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976), this Court emphasized "pendency of an action in a state court is no bar to proceedings concerning the same matter in the federal court," but on the facts before it, abstention was permitted on "exceptional circumstances" grounds to foster "wise judicial administration." The "exceptional circumstance" present in *Colorado River* was the McCarran Amendment, 66 Stat. 560, 43 U.S.C. § 666, by which the United States waived sovereign immunity to permit joinder of the United States in some state court suits for adjudication of water rights. However, this Court again emphasized circumstances permitting abstention in deference to parallel state court proceedings "are considerably more limited than the circumstances appropriate for [constitutional and comity based] abstention" and "*[o]nly the clearest of justifications will warrant dismissal* [*i.e.*, abstention]." *Id.* at 818-19 (emphasis in original).

In *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983), this Court re-affirmed *"Col-*

orado River abstention applies only in clear and exceptional cases, with the balance heavily weighted in favor of the exercise of jurisdiction."

> [W]e emphasize that our task in cases such as this is not to find some substantial reason for the *exercise* of federal jurisdiction by the district court; rather, the task is to ascertain whether there exists "exceptional" circumstances, the "clearest of justifications" that can suffice under *Colorado River* to justify the *surrender* of that jurisdiction. . . .

Id. at 25-26 (emphasis in original).

There are three constitutional or comity bases for abstention. First, a district court may postpone adjudication of a federal constitutional issue which may be mooted or presented in a different posture by state court determination of a state law issue. *R.R. Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). Second, a district court may abstain when exercise of federal subject matter jurisdiction would substantially interfere with a state regulatory scheme dealing with matters of significant importance to the state. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Third, a district court may abstain where exercise of subject matter jurisdiction would call upon the federal court to restrain state court proceedings in which the state has a significant law enforcement interest. *Younger v. Harris*, 401 U.S. 37 (1971).

None of the constitutional-comity bases for federal abstention are present here.

This Court has also recognized a narrow exception to the basic rule established by *Colorado River* and *Moses H. Cone*, where it has been able to identify in pertinent Congressional legislation a tempering of the policy against federal abstention. Such legislation was present in *Colorado River* where, deferring to Congressional policy declared in the McCarran Amendment, the Court approved dismissal of a federal action in favor of a parallel state court proceeding—"By far the most

important factor in our decision to approve the dismissal there [in *Colorado River*] was the 'clear federal policy . . . [o]f avoidance of piecemeal adjudication of water rights in a river system . . . as evidenced in the MCarran Amendment. . . .'" *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983).

In *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942) this Court had also found such tempering legislation in the Federal Declaratory Judgment Act. For this reason it was held district courts have broad discretion to determine whether they should entertain an action seeking relief under the Declaratory Judgment Act, even though such suit otherwise satisfied federal subject matter jurisdictional requirements. As stated by Justice Douglas (concurring): "The exercise of jurisdiction under the Federal Declaratory Judgment Act is certainly not compulsory; it is discretionary." *Id.* at 499.

In *Wilton v. Seven Falls Co.*, ___ U.S. ___, 115 S.Ct. 2137 (1995), this Court revisited federal abstention under the Declaratory Judgment Act by addressing the following issue:

> [W]hether the discretionary standard set forth in [*Brillhart*] . . . , or the "exceptional circumstances" test developed in [*Colorado River* and *Moses H. Cone*], governs a district court's decision to stay a declaratory judgment action during the pendency of parallel state court proceedings, and under what standard of review a court of appeals should evaluate the district court's decision to do so.

Id. at 2139.

This Court found *Colorado River* and *Moses H. Cone* had not rendered *Brillhart* "an outmoded relic of another era." *Id.* at 2142. That was so, because:

> Distinct features of the Declaratory Judgment Act, we believe, justify a standard vesting district courts with greater discretion in declaratory judgment actions than

> that permitted under the "exceptional circumstances" test of *Colorado River* and *Moses H. Cone*. No subsequent case, in our view, has called into question the application of the *Brillhart* standard to the *Brillhart* facts.
>
> Since its inception, the Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants. On its face, the statute provides that a court "*may* declare the rights and other legal relations of any interested party seeking such declaration." . . . The statutes' textual commitment to discretion, and the breath of leeway we have always understood it to suggest, distinguish the declaratory judgment context from other areas of the law in which concepts of discretion surface. . . .

Id. at 2142 (emphasis in original).

Therefore, "[c]onsistent with the nonobligatory nature of the [declaratory] remedy, a district court is authorized, in the sound exercise of its discretion, to stay or to dismiss an action seeking a declaratory judgment before trial or after all arguments have drawn to a close." *Id.* at 2143.

In contradistinction to the Declaratory Judgment Act, the statutory scheme granting district courts interpleader jurisdiction evidences not the slightest intention such jurisdiction be "discretionary."

> [I]nstead of there being some "recognized public policy or defined principle" to the contrary, the [Federal Interpleader Act], which announces the public policy, does not leave it optional with the [district court] to pretermit such a case to State Court action, but on the contrary authorizes the Federal court to enjoin State Court proceedings in order to protect its jurisdiction.

Maryland Casualty Co. v. Glassell-Taylor & Robinson, 156 F.2d 519, 525 (5th Cir. 1946); *See also Boston Old Colony Ins. Co. v. Balbin*, 591 F.2d 1040 (5th Cir. 1979).

Among the factors counseling against *Colorado River/ Moses H. Cone* abstention in interpleader actions is the exercise by the district court of jurisdiction over property. *Colorado River*, 424 U.S. 800, 818 (1976).

All interpleader actions require as a jurisdictional predicate, deposit into the registry of the court property belonging to one or more of the claimants. As in the present case, it is very difficult to comprehend any justification for a federal district court entertaining an interpleader action, granting interpleader relief to the stakeholder, and then terminating the proceeding in mid-stream because one of the claimants sees fit to file a state court proceeding, thereby delegating to the subsequently commenced state court action the responsibility of telling the federal court what to do with the property. In an interpleader action, federal process is employed to take property from a citizen and to place it in the custody of the district court pending resolution of conflicting claims to it. Jurisdiction granted by the Federal Interpleader Act is a most appropriate candidate for the protection afforded by *Colorado River/Moses H. Cone* against federal abstention.

The Third Circuit's majority decision below sets the standard governing district court abstention in all interpleader actions henceforth commenced in the Third Circuit. It constitutes an unwarranted expansion of the *Brillhart* "discretionary" standard to govern abstention in federal interpleader actions. It not only compromises the integrity of the Federal Interpleader Act, but it also represents an invitation to district courts and courts of appeals in other circuits to expand *Brillhart* to other areas where the purpose of federal subject matter jurisdiction may be deemed to provide "equitable relief." This expansion of *Brillhart* is not justified by the *Wilton* decision; it most certainly cannot be justified by the statutory interpleader scheme established by Congress; it constitutes a substantial erosion of the "exceptional circumstance" test mandated by this Court in *Colorado River* and *Moses H. Cone* as the standard governing federal abstention; and, it repre-

sents an administration of the federal interpleader statutes contrary to that applicable in other circuits:

> We consider it important that the usefulness of the statutory remedy of interpleader . . . should not be impaired by narrow and restrictive rulings. In such cases where jurisdiction clearly appears, Federal District Courts do not have the right to decline to exercise that jurisdiction in litigation involving no important question of public policy of the State.

Maryland Casualty Co. v. Glassell-Taylor & Robinson, 156 F.2d 519, 524 (5th Cir. 1946); *See also Boston Old Colony Ins. Co. v. Balbin*, 591 F.2d 1040 (5th Cir. 1979).

CONCLUSION

For the reasons set forth above, this Petition for a Writ of Certiorari should be granted.

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Respectfully submitted,

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